States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the board within the 60-day period, not counting Sunday as the sixtieth day.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on such petition has been made, the unpaid amount of the assessment must be paid upon notice and demand from the collector of internal revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute a waiver of your right to file a petition with the United States Board of Tax Appeals on the inclosed Form A, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:CR:Ad–WLC–60D. In the event that you acquiesce in a part of the determination, the waiver should be executed with respect to the items to which you agree.

Respectfully,

D. H. BLAIR, *Commissioner,*
By (s) C. R. NASH,
Assistant to the Commissioner.

6 *Exhibit A–2 to petition*

IT:CR:Ad–WLC.

Statement of returns examined and resulting tax liability

RETURNS EXAMINED

Company	Years	Form
Chicago Portrait Company	1922	1120
	1923	1120
Leach Art Company	1922	1120
	1923	1120
Independent Portrait Company	1922	1120
	1923	1120

TAX LIABILITY

Company	Years	Deficiency
Chicago Portrait Company, 509 S. Wabash Street, Chicago, Ill.	1922	None.
	1923	$1,919.59

The revenue agent's report dated February 17, 1926, has been made the basis for the above-stated result, in which the bureau concurs, as indicated in 30-day letter mailed to you on June 24, 1926.

The bureau has ruled that your company, the Leach Art Company, and the Independent Portrait Company were affiliated for the calendar years 1922 and 1923.

Now, Aug. 13, 1930, the foregoing petition certified from the record as a true copy.

[SEAL.]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Before U. S. Board of Tax Appeals

Answer

Filed Jan. 19, 1927

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, General Counsel Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer admits and denies as follows:

1. Respondent admits that the petitioner is a corporation with principal office at Chicago, Illinois.

2. Respondent admits that a notice of deficiency was mailed to the petitioner on September 21, 1926.

3. Respondent admits that the taxes in controversy are income taxes for the year 1923 in an amount not less than $1,919.59.

4. Respondent denies that he erred in determining the tax set forth in said notice of deficiency and further denies:

(a) That he erred in disallowing petitioner as a deduction in the year 1923 amounts alleged by the petitioner to represent income taxes paid by it to foreign countries.

(b) That he erred as alleged in subparagraph (b) of paragraph 4 of the petition and further denies that he failed to take into consideration income taxes paid by petitioner's foreign subsidiary to the Dominion of New Zealand.

(c) That he erred as alleged in subparagraph (c) of paragraph 4 of the petition.

5. (a) Respondent denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in subparagraph (a) of paragraph 5 of the petition, and therefore denies the same.

6. Respondent denies generally and specifically each and every allegation contained in taxpayer's petition not hereinbefore admitted, qualified, or denied.

Wherefore it is prayed that the taxpayer's appeal be denied.

A. W. GREGG,
General Counsel Bureau of Internal Revenue.

Of Counsel:

DWIGHT H. GREEN,
Special Attorney, Bureau of Internal Revenue.

Now, Aug. 13, 1930, the foregoing answer certified from the record as a true copy.

[SEAL.]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

8 Before U. S. Board of Tax Appeals

Motion to file amended petition

Filed Mar. 20, 1929

Chicago Portrait Company, by Ernest H. Emery, its counsel, moves that the board grant leave to file an amended petition in order that the petitioner may conform its allegations of fact to its proof as set out in a stipulation of facts filed at the hearing in Chicago, Illinois, on this twentieth day of March, 1929.

ERNEST H. EMERY,
Counsel for Petitioner,
1433 Conway Building, Chicago, Illinois.

3/20/29. Granted 10 days to file amended petition.

FOREST D. SIEFKIN,
Member; U. S. Bd. of Tax Appeals.

Now, Aug. 13, 1930, the foregoing motion to file amended petition certified from the record as a true copy.

[SEAL.]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Before U. S. Board of Tax Appeals

Amended petition

Filed March 25, 1929

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:CR:Ad-60D-WLC) dated September 21, 1926, and, as a basis of its proceeding, alleges as follows:

1. Petitioner is an Illinois corporation with its principal office at 509 South Wabash Avenue, Chicago, Illinois.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on September 21, 1926.

3. The taxes in controversy are corporation income taxes for the calendar year 1923 and for $1,919.59.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The commissioner erred in refusing to allow as a credit
9 against petitioner's income-tax liability for the calendar year 1923 any portion of income taxes paid or accrued to foreign countries by petitioner's foreign subsidiary corporation, the International Art Company, Ltd., of Sydney, New South Wales, Australia, on dividends received by petition in 1923 from said foreign subsidiary.

(b) The commissioner erred in holding that income taxes paid or accrued by petitioner's foreign subsidiary, the said International Art Company, to New South Wales do not constitute "income taxes * * * paid during the same taxable year to any foreign country * * *" within the meaning of section 238 (a) of the revenue act of 1921.

(c) The commissioner erred in relying upon S. M. 1614, Cumulative Bulletin III–1, page 227, which ruling, petitioner contends, is an erroneous interpretation of the meaning of the words "any foreign country" as used in section 238 (a) of the revenue act of 1921.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The Chicago Portrait Company, hereinafter called the petitioner, is a corporation organized under the laws of the State of Illinois, with its principal place of business at 509 South Wabash Avenue, Chicago, Illinois.

(b) That the petitioner keeps its books and files its returns upon the basis of a calendar year.

(c) That the petitioner keeps its books and files its returns upon the accrual basis.

(d) That during the calendar year 1923 the petitioner owned 51% of the total capital stock of the International Art Company, of Sydney, Australia, a foreign corporation.

(e) That the International Art Company kept its books on the basis of a fiscal year ended June 30th.

(f) That the net income of the International Art Company for the fiscal year ended June 30, 1923, was £7,772.9.0, and for the fiscal year ended June 30, 1924, was £8,170.7.0.

(g) That during the calendar year 1923 the International Art Company declared dividends as follows:

June 30, 1923	£5,953. 1. 7
September 15, 1923	1,275. 13. 3
December 31, 1923	708. 14. 0

(h) That during its taxable year ended December 31, 1923, the petitioner's share of the dividends declared by the International Art Company amount to £4,047.8.0, which, converted at the exchange rate at which said dividends were paid, namely, $4.55, amounted to $18,415.67.

10 (i) The petitioner's share of the dividends mentioned in paragraph (g) hereof are as follows:

Dividend of June 30, 1923	£3,086. 0. 0
Dividend of September 15, 1923	650. 0. 0
Dividend of December 31, 1923	361. 8. 0

(j) That the income taxes paid by the International Art Company upon its net income for the fiscal year ended June 30, 1923, were as follows:

To the Commonwealth of Australia	£395. 15. 0
To the State of New South Wales	986. 17. 6
Total income taxes paid	1,382. 12. 6

(k) That the income taxes paid by the International Art Company upon its net income for the fiscal year ended June 30, 1924, were as follows:

To the Commonwealth of Australia	£365. 4. 0
To the State of New South Wales	1,036. 12. 6
To the Dominion of New Zealand	114. 11. 8
Total income taxes paid	1,516. 8. 2

(l) That the exchange rates in effect at the dates the said three dividends were declared were as follows:

Dividend of June 30, 1923	$4.595
Dividend of September 15, 1923	4.545
Dividend of December 31, 1923	4.355

(m) That in determining the deficiency tax in question in the appeal at bar respondent refused to allow as a credit any portion of the income tax paid by the International Art Company to New South Wales for its fiscal years ended June 30, 1923 and 1924, in the amounts of £986.17.6 and £1,036.12.6, respectively, and also refused to allow as a credit any portion of the income taxes paid to the Commonwealth of Australia and the Dominion of New Zealand.

(n) That the respondent concedes that petitioner is entitled to credit against the tax due the United States the income taxes paid to the Commonwealth of Australia and the Dominion of New Zealand computed in accordance with the provisions of sec. 238 (e) of the revenue act of 1921.

(o) That the sole question to be determined by the Board in this appeal is whether New South Wales is a foreign country within the meaning of the revenue act of 1921.

6. Wherefore the petitioner prays that this board may hear the proceeding and may grant proper credit against petitioner's
11 income-tax liability for the calendar year 1923 on account of income taxes paid or accrued on dividends received from petitioner's foreign subsidiary, the said International Art Company, Ltd., of Sydney, New South Wales, Australia, to the Commonwealth of Australia, the Dominion of New Zealand, and to the State of New South Wales.

ERNEST H. EMERY,
Counsel for Petitioner,
1433 Conway Building, 111 W. Washington St.,
Chicago, Illinois.

Exhibit A to amended petition.

TREASURY DEPARTMENT,
Washington, Sep. 21, 1926.

IT:CR:Ad-60D-WLC.

CHICAGO PORTRAIT COMPANY,
509 South Wabash Avenue, Chicago, Illinois.

SIRS: An examination of your income-tax returns in connection with a revenue agent's report dated February 17, 1926, and of your

books of account and records and those of your affiliated companies discloses a deficiency in tax for the years 1922 and 1923 of $1,919.59, as shown in the attached statement.

In accordance with the provisions of section 274 of the revenue act of 1926 you are allowed 60 days from the date of mailing of this letter within which to file a petition for the redetermination of this deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the board within the 60-day period, not counting Sunday as the sixtieth day.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on such petition has been made, the unpaid amount of the assessment must be paid upon notice and demand from the collector of internal revenue. No claim for abatement can be entertained.

12 If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute a waiver of your right to file a petition with the United States Board of Tax Appeals on the inclosed Form A, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:CR:Ad–WLC–60D. In the event that you acquiesce in a part of the determination, the waiver should be executed with respect to the items to which you agree.

Respectfully,

D. H. BLAIR, *Commissioner.*

(Signed) By C. R. NASH,
Assistant to the Commissioner.

Inclosures: Statement; Form A.

Statement of returns examined and resulting tax liability

RETURNS EXAMINED

Company	Years	Form
Chicago Portrait Company	1922	1120
	1923	1120
Leach Art Company	1922	1120
	1923	1120
Independent Portrait Company	1922	1120
	1923	1120

TAX LIABILITY

Company	Years	Deficiency
Chicago Portrait Company, 509 South Wabash Street, Chicago, Illinois	1922	None.
	1923	$1,919.59

The revenue agent's report dated February 17, 1926, has been made the basis for the above-stated result, in which the bureau concurs, as indicated in 30-day letter mailed to you June 24, 1926.

The bureau has ruled that your company, the Leach Art Company, and the Independent Portrait Company were affiliated for the calendar years 1922 and 1923.

[*Duly sworn to by J. Toms Dover; jurat omitted in printing.*]

13 Before United States Board of Tax Appeals

Answer to amended petition

Filed Apr. 10, 1929

Comes now the Commissioner of Internal Revenue, by his attorney. C. M. Charest, General Counsel Bureau of Internal Revenue, and for answer to the amended petition filed in the above-entitled appeal admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition.

2. Admits the allegations contained in paragraph 2 of the amended petition.

3. Admits the allegations contained in paragraph 3 of the amended petition.

4. (a) Denies the allegations of error contained in paragraph 4 (a) of the amended petition.

(b) Denies the allegations of error contained in paragraph 4 (b) of the amended petition.

(c) Denies the allegations of error contained in paragraph 4 (c) of the amended petition.

5. Admits the allegations contained in sub-paragraphs (a) to (o), inclusive, of paragraph 5 of the amended petition.

Denies generally and specifically each and every allegation contained in the amended petition not hereinbefore admitted, qualified or denied.

14 Wherefore it is prayed that petition's appeal be denied.

(Signed) C. M. CHAREST,
General Counsel Bureau of Internal Revenue.

Of Counsel:

ARTHUR H. MURRAY,
Special Attorney, Bureau of Internal Revenue.

AHM/vgs. 4/9/29.

Now, Aug. 13, 1930, the foregoing answer to amended petition certified from the record as a true copy.

[SEAL.]

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

Before United States Board of Tax Appeals

Stipulation of facts

Filed Mar. 20, 1929

It is stipulated and agreed between the respective parties hereto, through their counsel, that the following facts are true and may be used by the board as the basis of its decision:

1. The Chicago Portrait Company hereinafter called the petitioner, is a corporation organized under the laws of the State of Illinois, with its principal place of business at 509 South Wabash Avenue, Chicago, Illinois.

2. That the petitioner keeps its books and files its returns upon the basis of a calendar year.

3. That the petitioner keeps its books and files its returns upon the accrual basis.

4. That during the calendar year 1923 the petitioner owned 51% of the total capital stock of the International Art Company, of Sydney, Australia, a foreign corporation.

5. That the International Art Company kept its books on the basis of a fiscal year ended June 30th.

6. That the net income of the International Art Company for the fiscal year ended June 30, 1923, was £7,722.9.0, and for the fiscal year ended June 30, 1924, was £8,170.7.0.

7. That during the calendar year 1923 the International Art Company declared dividends as follows:

June 30, 1923	£5,963. 1. 7
September 15, 1923	1,275. 13. 3
December 31, 1923	708. 14. 0

15 8. That during its taxable year ended December 31, 1923, the petitioner's share of the dividends declared by the International Art Company amounted to £4,047.8.0, which, converted at the exchange rate at which said dividends were paid, namely, $4.55, amounted to $18,415.67.

9. The petitioner's share of the dividends mentioned in paragraph 7 hereof are as follows:

Dividend of June 30, 1923	£3,036. 0. 0
Dividend of September 15, 1923	650. 0. 0
Dividend of December 31, 1923	361. 8. 0

10. That the income taxes paid by the International Art Company upon its net income for the fiscal year ended June 30, 1923, were as follows:

To the Commonwealth of Australia	£395. 15. 0
To the State of New South Wales	986. 17. 6
Total income taxes paid	1,382. 12. 6

11. That the income taxes paid by the International Art Company upon its net income for the fiscal year ended June 30, 1924, were as follows:

To the Commonwealth of Australia	£365. 4. 0
To the State of New South Wales	1,036. 12. 6
To the Dominion of New Zealand	114. 11. 8
Total income taxes paid	1,516. 8. 2

12. That the exchange rates in effect at the dates the said three dividends were declared were as follows:

Dividend of June 30, 1923	$4.595
Dividend of September 15, 1923	4.545
Dividend of December 31, 1923	4.355

13. That in determining the deficiency tax in question in the appeal at bar, respondent refused to allow as a credit any portion of the income tax paid by the International Art Company to New South Wales for its fiscal years ended June 30, 1923 and 1924, in the amounts of £986,17.6 and £1,036.12.6, respectively, and also refused to allow as a credit any portion of the income taxes paid to the Commonwealth of Australia and the Dominion of New Zealand.

14. That the respondent concedes that petitioner is entitled to credit against the tax due the United States the income taxes paid to the Commonwealth of Australia and the Dominion of New Zealand computed in accordance with the provisions of sec. 238 (e) of the revenue act of 1921.

15. That the sole question to be determined by the board in
16 this appeal is whether New South Wales is a foreign country within the meaning of the revenue act of 1921.

16. That upon the rendition of the interlocutory decision of the Board of Tax Appeals this appeal may be settled under rule 50 of the board's rules of practice.

ERNEST H. EMERY,
Counsel for Petitioner.
C. M. CHAREST,
Counsel for Respondent.

Now, Aug. 13, 1930, the foregoing stipulation certified from the record as a true copy.

[SEAL.]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Before U. S. Board of Tax Appeals

Findings of fact and opinion

Promulgated June 24, 1929

A true copy. Teste: B. D. Gamble, clerk, U. S. Board of Tax Appeals. (Seal.)

New South Wales held to be a foreign country within the meaning of section 238 (e) of the revenue act of 1921.

Ernest H. Emery, Esq., for the petitioner.
Arthur H. Murray, Esq., for the respondent.

This is a proceeding for the redetermination of a deficiency in income tax for 1923 in the amount of $1,919.59. The only issue is whether taxes paid to the State of New South Wales are taxes paid to a foreign country within the meaning of section 238 (e) of the revenue act of 1921. The respondent held that New South Wales was not a foreign country and determined the deficiency in question. The facts were stipulated.

FINDINGS OF FACT

The petitioner, The Chicago Portrait Company, is a corporation organized under the laws of the State of Illinois, with its principal place of business at Chicago, Illinois.

The petitioner keeps its books and files its returns upon the basis of a calendar year. It keeps its books and files its returns upon the accrual basis.

During the calendar year 1923 the petitioner owed 51% of the total capital stock of the International Art Company of Sydney,
Australia, a foreign corporation.
17 The International Art Company kept its books on the basis of a fiscal year ended June 30th.

The net income of the International Art Company for the fiscal year ended June 30, 1923, was £7,722.9.0, and for the fiscal year ended June 30, 1924, was £8,170.7.0.

During the calendar year 1923 the International Art Company declared dividends as follows:

June 30, 1923	£5, 953. 1. 7
September 15, 1923	1, 275. 13. 3
December 31, 1923	708. 14. 0

During its taxable year ended December 31, 1923, the petitioner's share of the dividends declared by the International Art Company amounted to £4,047.8.0, which, converted at the exchange rate at which said dividends were paid, namely, $4.55, amounted to $18,415.67.

The petitioner's share of the dividends declared in 1923 was as follows:

Dividend of June 30, 1923	£3, 036. 0. 0
Dividend of September 15, 1923	650. 0. 0
Dividend of December 31, 1923	361. 8. 0

The income taxes paid by the International Art Company upon its net income for the fiscal year ended June 30, 1923, were as follows:

To the Commonwealth of Australia	£395. 15. 0
To the State of New South Wales	986. 17. 6
Total income taxes paid	1, 382. 12. 6

The income taxes paid by the International Art Company upon its net income for the fiscal year ended June 30, 1924, were as follows:

To the Commonwealth of Australia	£365.4.0
To the State of New South Wales	1,036.12.6
To the Dominion of New Zealand	114.11.8
Total income taxes paid	1,516. 8.2

The exchange rates in effect at the dates the said three dividends were declared were as follows:

Dividend of June 30, 1923	$4.595
Dividend of September 15, 1923	4.545
Dividend of December 31, 1923	4.355

In determining the deficiency in question respondent refused to allow as a credit any portion of the income tax paid by the International Art Company to New South Wales for its fiscal years ended June 30, 1923 and 1924, in the amounts of £986.17.6 and
18 £1,036.12.6, respectively, and also refused to allow as a credit any portion of the income taxes paid to the Commonwealth of Australia and the Dominion of New Zealand.

The respondent concedes that petitioner is entitled to credit against the tax due the United States the income taxes paid to the Commonwealth of Australia and the Dominion of New Zealand computed in accordance with the provisions of section 238 (e) of the revenue act of 1921.

OPINION

SIEFKIN: The parties have stipulated the facts and have also agreed that the sole question to be determined by us is whether New South Wales is a foreign country within the meaning of the revenue act of 1921.

New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania were the six colonies united into a federal commonwealth known as the Commonwealth of Australia under an enabling act of the British Parliament dated July, 1900, effective January 1, 1901. The first five of these colonies are on the main land of the island of Australia, while Tasmania is a smaller island just south of the island of Australia. New South Wales is the oldest of the six States. In 1788, eighteen years after Captain Cook explored the east coast, Fort Jackson was founded as a penal settlement for criminals from England, and transportation was not suspended until about 1839. The legislative power of the State of New South Wales is vested in a federal parliament consisting of the sovereign, a senate, and a house of representatives, the sovereign being represented by a governor-general in whom the executive power is vested and who is assisted by an executive council appointed by himself. The constitution, parliament, and laws of each State, subject to the federal constitution, retain and safe-guard certain important state rights. New South Wales is a separate seat of government within its own boundaries.

The respondent contends that New South Wales is not a foreign country within the meaning of section 238 (e) of the revenue act of 1921, which is as follows:

"For the purposes of this section a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends (not deductible under section 234 in any taxable year should be deemed to have paid the same proportion of any income, war-profits or excess-profits taxes paid by such foreign corporation to any foreign country, or to any possession of the United States upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits: Provided, That the credit allowed to any domestic corporation under this subdivision shall in no case exceed the same proportion of the taxes against which it is credited which the amount of such dividend bears to the amount of entire net income of the domestic corporation in which dividends are included. * * *"

The argument of the respondent is that the term "country" is synonymous with the words "nation" or "state" and that in the absence of some qualifying phrase it has always been held to mean the composite whole made up of all the subdivisions of the foreign state subject to the same central control. The respondent argues that New South Wales, in this sense, is not a country but a part of a country.

On the other hand, the petitioner contends that Congress intended to use the phrase "foreign county" in section 238 (e) as inclusive of a taxing jurisdiction imposing an income tax outside of the jurisdiction of the income-tax levying jurisdiction of the United States.

We can assume that New South Wales is "foreign" in view of the discussion by Chief Justice Marshall in Cherokee Nation v. Georgia (30 U. S. 5 Peters 1, 56), in which the Cherokee Nation of Indians was held a foreign nation. In that opinion it was said:

"In a political sense we call every country foreign which is not within the jurisdiction of the same government. In this sense Scotland, before the union, was foreign to England, and Canada and Mexico foreign to the United States. In the United States all trans-Atlantic countries are foreign to us, but this is not the only sense in which it is used, * * *. For all national purposes embraced by the Federal Constitution the States and the citizens thereof are one, united under the same sovereign authority and governed by the same laws. In all other respects the States are necessarily foreign and independent of each other, their constitutions and forms of government being (though republican) altogether different, as are their laws and constitutions. * * *

"Thus in the clause giving jurisdiction to this court the term 'foreign state' is used instead of 'foreign nations' as in the

clause relating to commerce. And again, in Article I, paragraph 10, a still different phraseology is employed: 'No State, without the consent of Congress, shall enter into any agreement or compact with a "foreign power."' But each of these terms, 'nation,' 'state,' and 'power,' as used in different parts of the Constitution, imparts the same thing and does not admit of a different interpretation."

Similarly the cases involving the status of Porto Rico under the tariff act of July 24, 1897, indicate the extent to which our courts have gone in defining the phrase "foreign country." In De Lima v. Bidwell (182 U. S. 1) it was held that the island of Porto Rico, after its cession to the United States by the treaty with Spain, was no longer a foreign country within the meaning of the tariff act which declared that certain duties should be collected on all articles imported from foreign countries, and this, although Porto Rico had not been formally embraced by Congress within the customs union of the States. The court made the following observation at page 180:

"A foreign country was defined by Mr. Chief Justice Marshall and Mr. Justice Story to be one exclusively within the sovereignty of a foreign nation and without the sovereignty of the United States, citing The Boat 'Eliza' (2 Gall. 4, Faber v. United States, 1 Story 1), The Ship 'Adventure' (1 Brock 234, 241)."

It is assumed in De Lima v. Bidwell, supra, that before Porto Rico was ceded by Spain it was a "foreign country" within the meaning of the tariff act.

The phrase "foreign country" was construed by the Supreme Court of the United States in Pearcy v. Stranahan (205 U. S. 257), where the court said:

"The Isle of Pines must be regarded at least de facto under the jurisdiction of the Republic of Cuba and hence as a foreign country within the meaning of Dingley Tariff Act, July 24, 1897 (c. 11, 30 Stat. 151), since the United States has never taken possession of such island as included in the territory ceded by Spain to the United States in the treaty of peace, but, instead, through its legislative and executive departments, has recognized the Cuban Government as rightfully exercising sovereignty over the Isle of Pines as a de facto government until the de jure status shall be determined."

The Supreme Court of the United States also stated in Faber v. U. S. 221 (U. S. 649, 658, 659):

"But in the absence of some qualifying phrase 'the term
21 "country" in the revenue laws of the United States has always been construed to embrace all the possessions of a foreign state, however widely separated, which are subject to the same supreme executive and legislative control.' (Stairs v. Peaslee, 18 How. 521.)"

An almost exact analogy to New South Wales, as embraced in the Commonwealth of Australia, is found in the various Provinces of Canada, and in Myers v. U. S. (140 Fed. 648) the court was consid-

ering an importation of wood pulp from Quebec. The Province of Quebec imposed a license fee for cutting wood on public lands, but reduced that license fee when the wood was manufactured into pulp in Canada. The court held that this license fee was, in effect, the imposition of an "export duty" on wood pulp exported to the United States within the meaning of the tariff act, which provided a countervailing duty on wood pulp equal to the amount of export duty imposed on wood pulp by the country of exportation. The court said:

"The Dominion of Canada is divided into Provinces, among which are Ontario and Quebec. By the British North America act (chapter 3, 30–31 Vict.) the Dominion of Canada has exclusive power to impose export or import duties. But in sections 91 and 92 of that act, we find, in the distribution of powers among the Provinces, that it is provided each provincial legislature has the following power of legislation: (1) Power of direct taxation within the Province, in order to the raising of revenue for provincial purposes; (2) management and sale of public lands belonging to the Province, and of the timber and wood thereon; (3) shop, saloon, tavern, auctioneer, and other licenses, in order to the raising of the revenue for provincial, local, or municipal purposes. I think each Province has the power of taxation by way of license in those matters confided to it. If, in the exercise of this power lawfully granted, whether by the mother country direct or by it through the Dominion, the Province in point of fact and in effect imposes an export duty on pulp wood exported to the United States, it is an imposition of that duty by the Dominion of Canada. There is no question that the Dominion of Canada is a dependency of the Kingdom of Great Britain. I do not regard it necessary to recite the various laws, etc., bearing on the subject. In effect, by authority of law, an export duty is imposed. It is not done directly by the Kingdom of Great
22 Britain, or directly by the Dominion of Canada, but it is done under legislation authorized by the Dominion. I can not agree with the reasoning that arrives at a conclusion that this is not a duty imposed by a dependency of the country we call England, one of the great powers of the world. * * *"

In this proceeding we believe the position of the respondent is untenable. If New South Wales is, as he contends, merely a part of a larger government, either the Commonwealth of Australia or the British Empire, it must be that the imposition of the income tax imposed by New South Wales is, by reason of the delegation of powers to New South Wales, in effect an income tax of Australia or of the British Empire. If, however, this is not so, then New South Wales is not acting as a dependency or a portion of the whole, but as a sovereign state and as such is entitled to be classified as a foreign country in its own right. We conclude that his action was erroneous, not only for this reason, but also because we are satisfied that the purpose of Congress in section 238 (e) of the revenue act of 1921 and related sections applying to individuals intended to provide for a credit on income taxes paid to foreign political entities subject only

to the limitation imposed by reciprocal credit by that political entity.

Reviewed by the board.

Judgment will be entered under rule 50.

Now, Aug. 13, 1930, the foregoing findings of fact and opinion certified from the record as a true copy.

[SEAL.] B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

Before United States Board of Tax Appeals

Decision

Entered Sept. 5, 1929

Pursuant to opinion and findings of fact promulgated June 24, 1929, the respondent herein, to wit, on August 17, 1929, having filed a proposed redetermination for the year 1923, and the petitioner on August 24, 1929, having filed notice of acquiescence to the said proposed redetermination, it is

Ordered and decided that there is an overpayment for the year 1923 in the amount of $382.36.

(Signed) BENJAMIN H. LITTLETON,
Member, U. S. Board of Tax Appeals.

23 Enter.

Entered Sep. 5, 1929.

vlh

Now, Aug. 13, 1930, the foregoing decision certified from the record as a true copy.

[SEAL.] B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

A true copy. Teste:

B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

Before U. S. Board of Tax Appeals

Notice of filing petition for review

Filed Feb. 25, 1930

To CHICAGO PORTRAIT COMPANY,
509 Wabash Avenue, Chicago, Illinois.

You are hereby notified that the Commissioner of Internal Revenue did, on the 14th day of February, 1930, file, with the clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review, by the United States Circuit Court for the Seventh

Circuit, of the decision of the board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignment of errors as filed is hereto attached and served upon you.

Dated at Washington, D. C., this 14th day of February, 1930.

C. M. CHAREST,
General Counsel Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignment of errors mentioned therein, is hereby acknowledged this 18th day of February, 1930.

CHICAGO PORTRAIT COMPANY,
By R. B. STOUT, *Pres.*

acb 2/12/30

24 Before U. S. Board of Tax Appeals

Notice of filing petition for review

Filed Feb. 25, 1930

To ERNEST H. EMERY, ESQUIRE,
1433 Conway Building, 111 West Washington St.,
Chicago, Ill.

You are hereby notified that the Commissioner of Internal Revenue did, on the 14th day of February, 1930, file, with the clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review, by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignment of errors as filed is hereto attached and served upon you.

Dated at Washington, D. C., this 14th day of February, 1930.

C. M. CHAREST,
General Counsel Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignment of errors mentioned therein, is hereby acknowledged this 18th day of February, 1930.

ERNEST H. EMERY,
Attorney for Respondent.

acb 2/12/30

Now, Aug. 13, 1930, the foregoing petition for review and notices of filing certified from the record as a true copy.

[SEAL.] B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

Before United States Board of Tax Appeals

Petition of the Commissioner of Internal Revenue for a review of the decision of the United States Board of Tax Appeals

Filed Feb. 14, 1930

Now comes Robert H. Lucas, Commissioner of Internal Revenue, by his attorneys, G. A. Youngquist, Assistant Attorney General, and C. M. Charest, General Counsel Bureau of Internal Revenue, and respectfully shows:

I

That he is the duly appointed, qualified, and acting Commissioner of Internal Revenue, appointed and holding office by virtue of the laws of the United States; that Chicago Portrait Company is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business at Chicago, Illinois, and filed its income tax return for the year 1923 with the collector of internal revenue for the first district of Illinois; that the said Chicago Portrait Company has its principal place of business, and the said collector of internal revenue for the first district of Illinois has his office, within the jurisdiction of the United States Circuit Court of Appeals for the Seventh Circuit.

That the court in which the review of this proceeding is sought is the United States Circuit Court of Appeals for the Seventh Circuit.

II

The nature of the controversy is as follows, to wit:

During the calendar year 1923, Chicago Portrait Company, the respondent, owned 51 per cent of the total capital stock of the International Art Company of Sydney, Australia, a foreign corporation.

The International Art Company kept its books on the basis of a fiscal year ended June 30. The net income of the International Art Company, for the fiscal year ended June 30, 1923, was £7,722.9.0, and for the fiscal year ended June 30, 1924, was £8,170.7.0.

During the calendar year 1923, the International Art Company declared dividends as follows:

June 30, 1923	£5,953. 1. 7
September 15, 1923	1,275. 13. 3
December 31, 1923	708. 14. 0

The rate of exchange of the pound sterling, in effect on the date on which each of the said three dividends were declared, was, as follows:

Dividend of June 30, 1923	$4.595
Dividend of September 15, 1923	4.545
Dividend of December 31, 1923	4.355

Chicago Portrait Company, the respondent, kept its books and filed its returns upon the basis of a calendar year. It kept its books and filed its returns upon the accrual basis.

During its taxable year ended December 31, 1923, respondent's share of the dividends declared by the International Art Company, as aforesaid, amounted to £4,047.8.0 (which, converted at the rate of exchange at which said dividends were paid, namely, $4.55, amounted to $18,415.67), computed as follows:

Dividend of June 30, 1923	£3,036. 0. 0
Dividend of September 15, 1923	650. 0. 0
Dividend of December 31, 1923	361. 8. 0

The income taxes paid by the International Art Company, upon its net income for the fiscal year ended June 30, 1923, were as follows:

To the Commonwealth of Australia	£395. 15. 0
To the State of New South Wales	986. 17. 6

The income taxes paid by the International Art Company, upon its net income for the fiscal year ended June 30, 1924, were as follows:

To the Commonwealth of Australia	£365. 4. 0
To the Dominion of New Zealand	114. 11. 8
To the State of New South Wales	1,086. 12. 6

In its income-tax return for the year 1923 taxpayer sought to credit to its tax liability for 1923 a proportionate part of the income taxes paid by the International Art Company to the State of New South Wales, the Commonwealth of Australia, and the Dominion of New Zealand, as aforesaid, under section 238 (e) of the revenue act of 1921.

The Commissioner of Internal Revenue, after duly auditing said return, sent a notice by registered mail to the taxpayer, under date of September 21, 1926, proposing a deficiency in tax for the year 1923, in the sum of $1,919.59. In determining the deficiency the commissioner disallowed as a credit to respondent's tax
27 liability for 1923 any portion of the income taxes paid by the International Art Company to the Commonwealth of Australia, the Dominion of New Zealand, and the State of New South Wales, as aforesaid.

On November 20, 1926, taxpayer filed a petition with the United States Board of Tax Appeals for the redetermination of the tax deficiency above mentioned. The commissioner filed an answer thereto January 19, 1927. Taxpayer filed an amended petition March 25, 1929, to which the commissioner filed an answer, on April 10, 1929. A hearing was held before the board March 20, 1929, at which hearing the commissioner conceded that taxpayer was entitled to credit a proportionate part of the income taxes paid by the International Art Company to the Commonwealth of Australia and the Dominion of New Zealand, under section 238 (e) of the revenue act of 1921. The parties then and there stipulated that the sole question to be determined by the board was whether the State of New South Wales is a foreign country, within the meaning of section 238 (e) of the revenue act of 1921, so that taxpayer may credit to its tax liability for 1923 a proportionate part of the income tax paid to the State of New South Wales by the International Art Company.

The opinion and interlocutory decision of the board was promulgated June 24, 1929, and on September 5, 1929, the board entered its order of redetermination that there is an overpayment of tax by this taxpayer, for the year 1923, in the sum of $382.36.

The board held that taxpayer was entitled to credit a proportionate part of the income tax paid to the State of New South Wales, upon the grounds that the State of New South Wales is entitled to be classified as a foreign country in its own right, and upon the further grounds that section 238 (e) of the revenue act of 1921 provides for a credit of income taxes paid to all foreign political entities, in which it included New South Wales.

III

The said commissioner being aggrieved by the conclusions of law contained in said decision, and by the said order of redetermination, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Seventh Circuit.

Wherefore he petitions that a transcript of record be prepared, in accordance with the rules of the United States Circuit Court
28 of Appeals for the Seventh Circuit, and transmitted to the clerk of said court for filing and appropriate action, to the end that the errors complained of may be reviewed and corrected by the United States Circuit Court of Appeals for the Seventh Circuit.

IV

The commissioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in holding and deciding that the State of New South Wales is a "foreign country" in its own right, within the provisions of section 238 (e) of the revenue act of 1921.

2. The Board of Tax Appeals erred in failing to hold and decide that the State of New South Wales is not a "foreign country," within the provisions of section 238 (e) of the revenue act of 1921.

3. The Board of Tax Appeals erred in holding and deciding that section 238 (e) of the revenue act of 1921 provides for the credit of income taxes paid to all foreign political entities.

4. The Board of Tax Appeals erred in failing to hold and decide that section 238 (e) of the revenue act of 1921 provides for the credit of income taxes paid to a foreign country only, and not to a political subdivision thereof.

5. That the Board of Tax Appeals erred in holding and deciding that the commissioner erred in disallowing a credit to taxpayer, for 1923, of a proportionate part of the income tax paid by International Art Company to the State of New South Wales, under section 238 (e) of the revenue act of 1921.

6. The Board of Tax Appeals erred in failing and refusing to hold and decide that no part of the income tax paid by International

Art Company to the State of New South Wales is an allowable credit to taxpayer's tax liability for 1923, under section 238 (e) of the revenue act of 1921.

7. The Board of Tax Appeals erred in entering its final order of redetermination that there is an overpayment in income tax of Chicago Portrait Company, for the year 1923, in the sum of $382.36.

8. The Board of Tax Appeals erred in failing and refusing to enter a final order of redetermination that there is a deficiency in income tax due from Chicago Portrait Company, for the year 1923, in such sum as would be found by disallowing the credit of any part of the income tax paid by the International Art Company to the State of New South Wales.

29

G. A. YOUNGQUIST,
Assistant Attorney General.
C. M. CHAREST,
General Counsel Bureau of Internal Revenue.
PREW SAVOY,
Special Attorney, Office of the General Counsel, Bureau of Internal Revenue.

acb 2/ 2/12/30.

[*Duly sworn to by C. M. Charest; jurat omitted in printing.*]

30 Before U. S. Board of Tax Appeals

Order enlarging time

Entered Apr. 11, 1930

On motion of counsel for the petitioner it is

Ordered that the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above-entitled proceeding in the United States Circuit Court of Appeals, Seventh Circuit, be, and it is hereby, extended to June 16, 1930.

(Signed) J. E. MURDOCK,
Member.

A true copy. Teste:
[SEAL.]
B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

Dated, Washington, D. C., April 11, 1930.

Before U. S. Board of Tax Appeals

Order enlarging time

Entered June 16, 1930

On motion of counsel for the petitioner it is

Ordered that the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the

above-entitled proceeding in the United States Circuit Court of Appeals, Seventh Circuit, be, and it is hereby, extended to August 15, 1930.

(Signed) LOGAN MORRIS,
Member.

A true copy. Teste:
[SEAL.] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.
Dated, Washington, D. C., June 16, 1930.

31 Before United States Board of Tax Appeals

Præcipe

Filed Aug. 4, 1930

To the Clerk of the United States Board of Tax Appeals:

You are requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to the review taken in the above-entitled case, and to include, in such transcript of record, copies duly certified as correct of the following documents:

1. Docket entries of proceedings before the board.
2. Pleadings before the board.
a. Petition.
b. Answer.
c. Stipulation of facts.
d. Motion to file amended petition.
e. Amended petition.
f. Answer to amended petition.
3. Findings of fact, opinion, and decision of the board.
a. Order of redetermination.
4. Petition for review and assignments of error.
a. Notice of filing thereof with proof of service.
5. This præcipe.

(Sgd.) C. M. CHAREST,
General Counsel Bureau of Internal Revenue.

I hereby this 29th day of July, 1930, accept due personal service of a copy of the foregoing præcipe.

(Sgd.) ARNOLD R. BAAR,
(Sgd.) HERMAN T. REILING,
Attorney for Respondent,
11 S. La Salle St., Chicago.

acb 7/10/30.

Now, Aug. 13, 1930, the foregoing præcipe certified from the record as a true copy.

[SEAL.] B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

32 [Clerk's certificate to foregoing transcript omitted in printing.]

33 [Appearances of counsel omitted in printing.]

34 [Omitted.]

35 In United States Court of Appeals for the Seventh Circuit

B. T. A. No. 21396; C. C. A. No. 4434

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

CHICAGO PORTRAIT COMPANY, RESPONDENT

Motion to substitute party petitioner

Filed Oct. 29, 1930

Comes now David Burnet, as Commissioner of Internal Revenue, by and through his attorney, C. M. Charest, General Counsel Bureau of Internal Revenue, and respectfully shows to this court;

That on the 14th day of February, 1930, within six months after the decision of the United States Board of Tax Appeals, the Commissioner of Internal Revenue, pursuant to the provisions of section 1001 (a) of the revenue act of 1926, as amended by section 603 of the revenue act of 1928, filed a petition with the board to have its decision reviewed by the United States Circuit Court of Appeals for the Seventh Circuit.

That since the filing of the petition for review in the above-entitled cause Robert H. Lucas, who was at that time Commissioner of Internal Revenue, and was the petitioner at that time in the above-entitled cause, has resigned as said Commissioner of Internal Revenue, and his resignation has been duly accepted.

That Robert H. Lucas ceased to be Commissioner of Internal Revenue on the 15th day of August, 1930.

That David Burnet was duly appointed as Commissioner of Internal Revenue to succeed the said Robert H. Lucas, and has duly qualified as said Commissioner of Internal Revenue.

That on August 20, 1930, said David Burnet became Commissioner of Internal Revenue, and ever since that time has been and now is Commissioner of Internal Revenue.

Wherefore it is accordingly prayed that the above-entitled cause be revived so that this action will be pending by the said David
36 Burnet, as Commissioner of Internal Revenue, as against the respondent in the above-entitled cause, and that the said David Burnet, as Commissioner of Internal Revenue, be substituted as the petitioner in this cause for the said Robert H. Lucas, formerly Commissioner of Internal Revenue.

It is further shown to this court that there is substantial need for so continuing and maintaining this cause, because if it is not so continued and maintained, the order of the United States Board of Tax Appeals, for the review of which the petition for review in this cause was filed, will become final; that no part of the amount determined as the deficiency by the commissioner but disallowed as such by the decision of the board, which would thus become final, could ever be assessed or collected by distraint or by proceeding in court with or without assessment, or by any other method or form of proceeding.

It is further shown to this court that the said David Burnet, as Commissioner of Internal Revenue, by and through his attorney, has caused to be mailed to the attorney of record for the respondent in the above-entitled cause a copy of this motion to revive this action in the name of David Burnet, as Commissioner of Internal Revenue, and to have his name substituted as petitioner in this cause.

C. M. CHAREST,
General Counsel Bureau of Internal Revenue,
Attorney for David Burnet,
as Commissioner of Internal Revenue.

[*Duly sworn to by C. M. Charest; jurat omitted in printing.*]

37 In United States Circuit Court of Appeals

[Title omitted.]

Order substituting party petitioner

Oct. 29, 1930

On motion of counsel for petitioner it is ordered by the court that this cause be revived so that the same will be pending in the name of David Burnet, as Commissioner of Internal Revenue, petitioner, against the Chicago Portrait Company, respondent.

It is further ordered that the said David Burnet, as Commissioner of Internal Revenue, be substituted for and in the place of Robert H. Lucas, as petitioner in this cause.

38 In United States Circuit Court of Appeals

[Title omitted.]

Order setting cause

April 14, 1931

It is ordered by the court that this cause be, and the same is, hereby set down for hearing May 13, 1931.

[Minute entering of argument and submission, May 13, 1931, omitted in printing.]

39 In United States Circuit Court of Appeals for the Seventh Circuit

No. 4434. October term, 1930, April session, 1931

COMMISSIONER OF INTERNAL REVENUE, petitioner

vs.

CHICAGO PORTRAIT COMPANY, respondent

Petition for review of decision of the United States Board of Tax Appeals

Opinion

Filed June 11, 1931

Before ALSCHULER, EVANS, and SPARKS, Circuit Judges

ALSCHULER, Circuit Judge: Review is sought of a ruling of the Board of Tax Appeals which sustained respondent's contention that it was entitled to deduct from its Federal income tax for the year 1923 the amount of an income tax for that year which it was required to pay upon its business done in New South Wales. (16 B. T. A. 1129.)

Respondent company is an Illinois corporation, and in the year in question owned 51 per cent of the voting stock of a subsidiary corporation of New South Wales. For that year the commissioner credited upon the income tax here returned income taxes of the subsidiary corporation levied by and paid to the Commonwealth of Australia and the Dominion of New Zealand, but refused to credit thereon any part of the income taxes paid by it to New South Wales.

The question involved is whether New South Wales comes
40 within the designation "any foreign country" as employed in section 238 of the revenue act of 1921, the applicable part of which is:

"SEC. 238. (a) That in the case of a domestic corporation the tax imposed by this title, plus the war-profits and excess-profits taxes, if any, shall be credited with the amount of any income, war-profits, and excess-profits taxes paid during the same taxable year to any foreign country, or to any possession of the United States: * * *"

New South Wales has been a British possession ever since Captain Cook visited it in 1770. Responsible government was conferred upon it in 1855, with a "legislative council" appointed by the Crown and an "elective legislative assembly." It was entirely separate and distinct from the other Australian colonies of Great Britain.

In 1900 the Commonwealth of Australia came into existence through a pact, to which New South Wales was a party, which

adopted a constitution delegating certain designated powers to the Government of the Commonwealth. In respect to other matters the constituent parties remained as they were before, each carrying on its own government, very much as with the States of the United States.

This grant of powers to the Commonwealth left New South Wales none the less a self-governing colony. It had and has the power to levy taxes. Income taxes were levied by it before it entered the Commonwealth, and have been ever since, under its sovereign authority to levy such taxes.

The word "country" can not be given a hard and fast definition, applicable alike to every situation in which it is employed. Petitioner places much reliance upon the manner of its use in the case of Stairs v. Peaslee (18 How. 521), where there was involved a question of appraisal of imported goods for tariff purposes. The law required the value to be such as the imported articles had at the principal markets of the country from which exported. The article there in question had been shipped from India to Nova Scotia, where there was practically no market for such product, and thence reshipped to the United States.

The importer contended that the appraisal should be based on Halifax (N. S.) value, but the appraisers fixed the value as that of London and Liverpool, finding them to be the principal markets for the article of the country whence imported. The court held
that under the revenue law it was not a question of law but of
41 fact for the appraisers to decide which place in the entire British dominion was the principal market therefor, saying, "the word country in the revenue laws of the United States has always been construed to embrace all the possessions of a foreign State however widely separated, which are subject to the same supreme executive and legislative control."

The opinion discloses also a very good reason for limiting its application to cases where import duties were involved. The court said:

"And, moreover, if the construction contended for by the plaintiff could be maintained, it would soon be found that goods would not generally be exported directly to the United States, from the principal market where they were procured, but sent to some other place where they were not in demand, to be shipped to this country, and invoiced far below their real value. The case before us shows what may be done to evade the payment of the just amount of duty; and neither the words of any revenue law, nor any policy of the government, would justify a construction alike injurious to the public and to the fair and honest importer."

Since that decision the political status of New South Wales and of some other British colonies has materially changed, so that they now far more nearly partake of the attributes of soverign, self-governing nations, especially in their commercial relations. It is

at least interesting to note that the opinion was rendered in 1855, the same year in which responsible government was first conferred upon New South Wales.

Indeed, if Stairs v. Peaslee were held applicable to sec. 238 (a) as applied to the entire British Empire, no income tax imposed by any British colony could be deducted, since only such British income taxes as were imposed by the Government of Great Britain alone would be deductible. Neither income taxes of the Australian Commonwealth, nor of New Zealand, which were in fact deducted, nor of Canada, or other independent self-governing colony would be deductible.

The evident purpose of section 238 is to prevent duplication of income and war-profits taxation upon the same income, and there is no logical reason why the deduction which the section undertakes to authorize should be that of one form of government or of another, so long as the country by which the tax is levied and to which it is paid is foreign to the United States.

We see no reason why the proper administration of section 238 would authorize deduction of such taxes when paid to the Commonwealth of Australia or to New Zealand, or both, and be denied when paid to the self-governing colony of New South Wales.

The judgment of the Board of Tax Appeals is affirmed.

42 [Omitted.]

43 In United States Circuit Court of Appeals

4434

COMMISSIONER OF INTERNAL REVENUE

vs.

CHICAGO PORTRAIT COMPANY

Petition for review of order of the United States Board of Tax Appeals

Judgment

June 11, 1931

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the decision of the said United States Board of Tax Appeals entered in this cause on September 5, 1929, be, and the same is hereby, affirmed.

44 [Clerk's certificate to foregoing transcript omitted in printing.]

45 Supreme Court of the United States

Order allowing certiorari

Filed October 26, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Indorsement on cover: Enter. Attorney General. File No. 36192. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 378. David Burnet, Commissioner of Internal Revenue, Petitioner, vs. Chicago Portrait Company. Petition for a writ of certiorari and exhibit thereto. Filed September 11, 1931. File No. 36192.

U. S. GOVERNMENT PRINTING OFFICE